

GOVERNMENT OF TELANGANA

ABSTRACT

Tribal Welfare Department - Khammam District- Revision Petition filed by Sri Etukuri Srinivas S/o: Venkateswarlu, Occ: Business, R/o Pogullapally, Kothaguda Mandal Erstwhile Warangal District and another against the Orders of the Additional Agent to Government in Case No.A/06/2006, dated 24.06.2006, Erstwhile, Warangal District Now Mulugu District- Revision Petition Dismissed - Orders – Issued

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No. 3

Dated: 30-05-2020

Read the following:-

- 1) Revision Petition filed by Sri Etukuri Srinivas S/o: Venkateswarlu, Occ: Business, R/o Pogullapally, Kothaguda Mandal Erstwhile Warangal District , Dt.18.07.2016.
- 2) Govt.Memo.No.9988/LTR-2/2006, Dt:28-08-2006.
- 3) From the Additional Agent to Government & Project Officer ITDA, Eturunagaram, Lr.Rc.no.A/06/2006, Dt:15-10-2007.
- 4) Govt.Lr.No.9988/ltr-2/2006,Dt:18-03-2008,17.06.2008,19.7.2008, 08.09.2008,11.09.2008, 22.12.2008, 10.06.2010,09.02.2015 18.03.2015,15.06.2017,29.08.2017,27.02.2018,26.04.2018, 22.06.2018,03.08.2018 and 26.11.2019.

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ORDER

In the reference 1st read above Revision Petition filed by Sri Etukuri Srinivas S/o: Venkateswarlu, Occ: Business, R/o Pogullapally, Kothaguda Mandal Erstwhile Warangal District and another have filed a Revision Petition through their Counsel before the Government aggrieved by the orders of the Additional Agent to Government & Project Officer, ITDA, Eturunagaram, Erstwhile Warangal District Now Mulugu District in Case No.A/06/2006, dated 24.06.2006.

2. In the reference 2nd read above, Government have granted Stay on the orders of the Project Officer & Additional Agent to Government Eturunagaram, Erstwhile Warangal District Now Mulugu District until further orders and the Project Officer was requested to furnish Para Wise Remarks and connected case records and in the reference 3rd read above the Addl. Agent to Government, Eturunagaram, Erstwhile Warangal District Now Mulugu District has furnished Para Wise Remarks and connected case records.

3. Government after conducting hearings and after careful examination of the Revision Petition and as verified from the documents produced before the authority made the following observations;

Case called on 7.12.2019. Revision Petitioner and his counsel/respondent called absent. Case previously called on:

27.3.2008	..	Petitioner present
30.6.2008	..	Adjourned
4.8.2008	..	Adjourned
17.9.2008	..	Adjourned
24.9.2008	..	Adjourned
31.12.2008	..	Petitioner present
24.6.2010	..	Petitioner present
26.2.2015	..	Adjourned
15.7.2017	..	Adjourned
16.9.2017	..	Adjourned
17.3.2018	..	Adjourned
5.5.2018	..	Adjourned
7.7.2018	..	Adjourned
18.8.2018	..	Adjourned

The case is pending from more than 13 years. Revision Petitioner has attended only on (3) dates while counsel for petitioner has never attended.

(contd...2)

Perused the record.

Initially, LTR case bearing No.A/06/LTR/Kothaguda/06 was registered by the Special Deputy Collector (TW), Eturunagaram, on a representation dated 23.12.2005 filed by the Secretary, Tribal Youth Welfare Association, AP Branch to the Hon'ble President of India stating that in Pogullapally, a scheduled village of Kothaguda (M), the non-tribal viz., Sri Etkuri Srinivas S/o Venkateswarlu has constructed Rice Mill in an extent of 0.30 gts in Sy.No.115/E and the non-tribal Sri Etkuri Srinivas running M/s. Srinivasa Binni Rice Mill.

As there was reason to believe that transfer of immovable property had taken place in contravention of LTR Act, notices were issued to all the concerned and on 31.3.2006, the Special Deputy Collector (TW), Eturunagaram had passed orders as follows:

- During the enquiry on 7.3.2006, the transferee Sri Etkuri Srinivas S/o Venkateswarlu (revision petition herein) had attended and deposed that about 15 years back he purchased land in Sy.No.115/E to an extent of 0.30 gts from Sri Damerashetti Somaiah (non-tribal) and constructed Rice Mill duly obtaining requisite permission in the year 2002 and submitted following documents in support of his claim.

Copy of NOC from GP of Pogullapally.

Copy of simple sale deed ddt.10.05.2002.

Copy of Electrical Power sanction certificate.

Copy of Certificate of Registration from Commercial Tax Department.

- On verification of above documents, it was clear that Sri Etkuri Srinivas had constructed Rice Mill in Pogullapally, a scheduled village in Kothaguda Mandal of Warangal District purchasing land from another non-tribal in the year 2002 in contravention of section 3 (1) (a) of APSA LTR Act 1/59 as amended in the year 1970, which is prohibiting transfer of immovable property from non-tribal to non-tribal and liable for ejectment.
- Accordingly, directed the MRO Kothaguda to take possession of the immovable property i.e. M/s.Srinivasa Binni Rice Mill with sheds, machinery etc in Sy.No.115/E in the extent of 0.30 gts situated in Pogullapally (v) for eventual assignment in favour of ST society registered or deemed to be registered under AP Cooperative Societies Act, 1964 which is composed solely of members of STs by conducting panchanama.

Aggrieved by the above orders of the Special Deputy Collector (Tribal Welfare) Eturunagaram in Case No.A/06/LTR/Kothaguda/06, dt.31.3.2006, the revision petitioner herein had filed an Appeal before the appellate authority i.e. Additional Agent to Government & Project Officer ITDA Eturunagaram which was numbered as Case No.A/06/2006 and it was dismissed on 24.6.2006 on the ground that clear transaction took place between two non-tribals after the commencement of LTR Act I of 1970 came into force.

Aggrieved by the above orders of the appellate authority i.e. Additional Agent to Government & Project Officer ITDA Eturunagaram in case No.A/06/2006, dated 24.6.2006, the petitioner herein filed Revision Petition before the Government on 18.7.2006 urging the following grounds:

- Orders passed by both the courts below are bad in law and contrary to the material on record.
- Order passed by the lower and appellate court is liable to be set aside on the ground of violation of principles of natural justice as no reasons were assigned in dismissing the Appeal.

(contd...3)

- Lower and Appellate Courts did not decide the case on its merits and no reasons of whatsoever nature were assigned in dismissing the Appeal.
- The provision of Regulation 1 of 1959 has no application since there is no transfer of immovable property in favour of non tribal at any point of time. There is no violation nor contravention of any provisions of Regulation 1 of 1959 as amended 1 of 1970.
- 2nd petitioner (Damerasetti Somaiah) is the owner of land bearing Sy.No.115/E to an extent of Ac.0.30 guntas situated at Pogullapalli village, Kothaguda Mandal, Warangal District, wherein the 2nd petitioner in association with the 1st petitioner (Etkuri Srinivas) constructed a Rice Mill locally known as M/s.Srinivasa Binny Rice Mill by obtaining permission from the Gram Panchayat, Pogullapalli village and also other competent authorities viz., Industries Department, Director of Factories. The petitioners also obtained electricity connection. The petitioners formed a partnership and carrying on business in the name and style of M/s.Srinivasa Binny Rice Mill.
- The Courts below ought to have seen that there is no material on record to make out a case that there was a transfer of land from tribal/non-tribal to another non-tribal to attract the provisions of Regulation 1 of 1959. No document is filed nor marked during the enquiry to presume that there was a transfer of land from one person to another person. The transfer means transfer of title with possession in respect of immovable property from one person to another in accordance with the procedure established by law in the instant case no such transfer of land has been established. Thus it is clear from the facts that there is no violation of provisions of Regulation 1 of 1959 as amended 1 of 1970.
- There is no complaint from the owner of the land i.e. 2nd petitioner stating that the 1st petitioner violated the provisions of Regulation 1 of 1959 as amended by 1 of 1970. The construction of a rice mill in scheduled area does not constitute contravention of the provisions of Regulation 1 of 1959 as amended by 1 of 1970.

The Project Officer, ITDA Eturunagaram has submitted original files of both Appellate and lower courts and also submitted para-wise remarks as follows:

- Lower and appellate courts have very keenly observed the facts and circumstances of the case and disposed the case as per law. (contd..4)
- There is no violation of principles of natural justice in disposing of the case. The authority under the regulation 1 of 1959 has ample power to order for eviction of non-tribal association organization which were in violation of the provisions Section 3 (1) of the Regulation I of 1959 as amended by Regulation I of 1970.
- The burden of proof lies on the petitioners to show that there was no violation or in contravention of the regulation 1 of 1959 as amended by regulation 1 of 1970 while submitting all the relevant documents. Further they have not shown that the 1st petitioner (non-tribal) as how possessed a right to associate with the 2nd non-tribal (petitioner) and also formed the association or partnership association with the name and style of juristic person M/s.Srinivas Binny Rice Mill which was not registered under the AP Cooperative Societies Act, 1964.
- The petitioner has not filed any single document to show that they are entitled to transfer of the land in the name of petitioner No.2 (non-tribal) except the tribal association which was registered under the APCS Act, 1964.

(contd...4)

- Lower court has well appreciated the matter in its evidence of record and judgement. The petitioner No.2 has not filed any related documents to show that the land was not transferred in the name of association and M/s.Srinivas Binny Rice Mill. The appellant court also has disposed off the matter giving its reasons in the judgement upholding the order of the lower court.
- 2nd petitioner being the owner of the land in Sy.No.115/E to an extent of 0.30 guntas in Pogullapally (v) of Kothaguda Mandal, he is found right to construct the Rice Mill but there is benami transfer of the land in favour of 1st petitioner by 2nd petitioner which is violation of LTR Act 1 of 1959 R/W 1/70.
- 1st and 2nd petitioners are formed to an association wherein in the entire immovable property has been shown in the name of M/s.Srinivas Binny Rice Mill, (a non-tribal association), which is in contravention of provisions of Section (3) of APSA LTR 1 of 1959 and also sub-section (4) in section 3 whereby transfer has been defined to include benami transaction.
- As the primary transaction is null and void, earlier the petitioner stated that they formed into partnership which was not registered under the APCS Act, 1964, moreover the body members are non-tribals. The partnership Act is applicable in scheduled areas between tribals only.
- The burden of proof lies on the petitioner to show that there was no transfer of land and also in the name of the association.
- The petitioner stated that they formed a partnership and carrying on business under M/s.Srinivas Binny Rice Mill. According to Section 2 (g) 'Transfer' means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing. The expression 'any other dealing with immovable property' implies and included formation of partnership – if this is allowed the very object of regulation and spirit enshrined in the Constitution would be defeated.

4) The case is pending since 2006. So far the petitioner has attended the court only on three dates and the counsel for petitioner has never attended and no useful documentary evidences have been either submitted before the Government at any stage except the grounds urged in the Revision Petition. Before the lower court, 1st petitioner viz., Sri Etkuri Srinivas attended the enquiry on 7.3.2006 and deposed that about 15 years back he purchased the land admeasuring 0.30 guntas in Sy.No.115/E in Pogullapally (v) in Kothaguda Mandal of Warangal District from Sri Damerashetti Somaiah, another non-tribal (now 2nd revision petitioner herein). To the said extent, he also filed a simple sale deed dt.10.05.2002. Now both the vendor and the vendee non-tribals hatched up a plan to circumvent the LTR proceedings before the Government and arguing that they both entered into partnership and constructed Rice Mill under the name and style M/s.Srinivasa Binny Rice Mill. The Rice Mill was constructed by the 1st petitioner Sri Etkuri Srinivas in the land of 2nd non-tribal petitioner Sri Damerashetti Somaiah and the licence issued by the Inspector of Factories, Warangal is also showing ownership of Sri A.Srinivas but not the 2nd petitioner viz., Damerashetti Somaiah. Thus, it is clear that Sri Etkuri Srinivas had purchased the land of 0.30 gts in Sy.No.113/E from another non-tribal Sri Damerashetti Somaiah. The formation of partnership by the 2nd petitioner i.e. owner of land Sri Damerashetti Somaiah with the 1st petitioner i.e. Sri Etkuri Srinivas is also null and void as per Section 2 (g) transfer means any other dealing with the immovable property is also prohibited under the LTR Regulation.

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5) Government after careful examination of the matter do not find any valid reason to interfere with the orders passed by the lower court i.e. Special Deputy Collector (Tribal Welfare) Eturunagaram in case No.A/06/LTR/Kothaguda/06, dt.31.3.2006 and orders confirmed by the appellate court in case No.A/06/2006, dt:24.06.2006 and accordingly hereby DISMISS the Revision Petition filed by Sri Etukuri Srinivas S/o: Venkateswarlu, Occ: Business, R/o Pogullapally, Kothaguda Mandal Erstwhile Warangal District & another and upheld the orders of the Addl.Agent to Government & Project Officer ITDA Eturunagaram.

6). The Additional Agent to Government and Project Officer, ITDA, Eturunagaram, Erstwhile Warangal District Now Mulugu District shall take necessary further action accordingly. The original case records received in the reference 3rd read above are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr. CHRISTINA Z.CHONGTHU
SECERETARY TO GOVERNMENT

To

- 1) Sri Etukuri Srinivas S/o Venkateswarlu
R/o Pogulapalli, Kothaguda (M), Warangal District.
- 2) Sri Damerasetti, S/o Venkataramaiah, Occ: Business, R/o: Pogullapally,
Kothaguda Mandal, Erstwhile Warangal District.
- 3) The Project Officer, ITDA and Additional Agent to Government,
Eturunagaram, Erstwhile Warangal District Now Mulugu District (w.e.)

Copy to :

The Special Deputy Collector(TW), Eturunagaram,
Erstwhile Warangal District Now Mulugu District
The Tahsildar, Kothagudem Mandal , Erstwhile Warangal District Now
Mulugu District for necessary action.

Sri A. Prabhakar Rao & M. Durga Prasad(Counsel for Petitioners) F-303,
H.No.3-6-681, Seetha Towers, Street No.10, Himayathnagar Hyd-29
P.S to M(TW)/P.S. to Prl. Secretary(TW)

SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER